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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,924	04/01/2004	Thomas G. Stekete		2923

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EXAMINER

PRINCE, FRED G

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/708,924

Applicant(s)

STEKETEE, THOMAS G.

Examiner

Fred Prince

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 7 is/are rejected.
- 7) ☒ Claim(s) 2-6 and 8-10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Interpretation

1. In claim 1 it is noted that applicant recites "without the need for any filter materials or water pump" in lines 9-10. It is not clear to the examiner if applicant is limiting the scope to a) a terminus that does not include a filter or b) a terminus that does not need filter material to assist in imploding bubbles. In the absence of clarification from applicant, the limitation is interpreted as meaning a terminus that does not need filter material to assist in imploding bubbles.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Margolis (US Pat No 4,385,989).

Margolis teaches an anti-spray, spray containment terminus (42) for an aquarium airlift tube (14) in which upward water flow is created by the combination of a tube (18,19) and the natural buoyancy of aeration bubbles that performs the dual purpose of preventing the escape of aeration bubbles from the airlift tube and anti-spray terminus assembly, and a means (56) for preventing the spray of fluids resulting from the

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implosion of the contained aeration bubbles from escaping from the said anti-spray terminus, without relying on the filter material for imploding bubbles.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rendell (US Pat No 6,634,034).

Rendell discloses a height adjustment device that consists of a cylindrical tube (16) that is threaded, and which subsequently screws onto a short cylindrical tube (14) that has been threaded with matching male or female threads that has been fit onto a tube (C). Rendell does not disclose that the cylindrical tube is compression fit onto an airlift tube.

It is submitted that it is well within the purview of the skilled artisan to utilize a compression fit to an airlift tube in order to, for example, avoid having to use adhesive material or releasably secure a tube (see, for example, US Pat No 4,385,989 to Margolis). Accordingly, it would have been readily obvious for the skilled artisan to have modified the height adjustment device of Rendell such that an airlift tube is connected to the cylindrical tube via a compression fit in order to, for example, avoid the use of adhesives or releasably secure a tube, as known in the art.

The recitation that the height adjustment device is "for use with any standard airlift tube terminus" is considered a recitation of intended use that is not given patentable weight in the claim since the recitation is not recited in the body of the claim and fails to breathe life and meaning into the claim.

Allowable Subject Matter

6. Claims 2-6 and 8-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter:

Per claim 2, while claim 1 is not patentable for the reasons provided above, in the examiner's opinion, the prior art fails to teach or fairly suggest an anti-spray terminus having the positioning and operational elements recited in the combination claim 1 and claim 2. The instant invention provides the advantages disclosed by applicant in paragraphs [0017] and [0018] in the instant specification.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. References are cited of interest to show the state of the art.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Prince whose telephone number is (571) 272-

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1165. The examiner can normally be reached on Monday-Thursday, 6:30-4:00; alt. Fridays 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Fred Prince
Primary Examiner
Art Unit 1724

fgp
8/31/05